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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,417	06/26/2003	Arun V. Shastry	02280.003530	4883
5514	7590	01/11/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			FAISON, VERONICA F	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,417

Applicant(s)

SHASTRY ET AL.

Examiner

Veronica F. Faison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-17,19-23,25 and 28-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-15,17-18,20,24-37,40-41 is/are rejected.
- 7) ☒ Claim(s) 7,16,19,21-23,38 and 39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

Claims 7, 15 and 16 have been amended. Claims 31-41 have been added. Claims 2, 9, 18, 24, 26 and 27 have been canceled. Hence, claims 1, 3-8, 10-17, 19-23, 25, and 28-41 are pending in the application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-4, 6, 10-15, 17, 18, 31-35, 37 are rejected under 35 U.S.C. 102(e) as being anticipated by Reitnauer et al (US 2003/0101902).

Reitnauer et al teaches a method for forming a mark on a food product wherein the ink composition comprises a wax and colorant, and may further comprise a resin and antioxidant (abstract and page 1 para. 0011). The reference further teaches that the resolution of the mark can be at least 50 dpi and the food product may be an egg, cheese, fruit or a confectionary (page 1 para. 0008-0009). The wax may be selected from beeswax, candelilla wax, carnauba wax, polyethylene glycol and cocoa butter wherein the wax is present in the amount of 50 to 99 percent by weight (page 2 para. 0019-0020). The colorant may include a pigment or dye (page 2 para. 0025-0026).

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The ink composition may further comprise a stabilizer (page 2 para. 0027). The ink composition may include other conventional hot melt ink components, wherein the amount of the components may be included in the ink to provide the desired viscosity (page 3 para. 0030). Reitnauer et al also teaches that the ink may be used in a conventional hot melt ink jet printer, piezoelectric printer (page 3 para. 0033-0034). The ink composition and product appears to anticipate the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 8, 20, 25, 26, 28-30, 36, 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reitnauer et al (2003/0101902) in view of Willcocks et al (WO 01/94116).

Reitnauer is described above, but fails to teach the specific printing method.

Willcocks et al teach a process for printing on edible substrate comprising the steps of (a) providing digital image information; (b) processing the digital image information to prepare processed digital image information; and (c) printing an image from the substrate with a drop on demand ink jet printer. The process may be obtained using a single printhead and single pass printing or the use of multiple printheads and/or multiple pass printing (page 6 line 16-page 7 line 2). The reference further teaches that the apparatus may be described as a conventional ink jet printing apparatus modified to operate using an edible ink comprising a cartridge for holding ink which is integrated with a printhead and modified to print on the edible substrates (page 18 lines 20-29). The apparatus typically comprises a conveyer for causing relative motion between the substrate and the printhead (page 18 line 32-page 19 line 2).

Therefore it would have been obvious to one of ordinary skill in the art to use the ink composition of Reitnauer et al in the printing apparatus of Willcocks et al as Reitnauer discloses that the ink composition may modify its viscosity and be used in a conventional printing method as Willcocks discloses a conventional printing method.

Allowable Subject Matter

Claims 7, 16, 19, 21-23, 38, 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

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Applicant's arguments filed 10-18-04 have been fully considered but they are not persuasive.

Applicant argues that in Reitnauer the colorant is added directly to the wax back with no particular disclosure of an agent for dispersing or dissolving the colorant in the wax. Applicant further states that although apparently provided as a "dispersion", this is no disclosure that the disclosed Apocarotenal colorant is provided in a fat or wax dispersible carrier. It is the position of the Examiner that it is known in the art that a color dispersion comprising at least a substance for dispersing the colorant and the colorant and therefore it would have been obvious to one of ordinary skill in the art to use a dispersion material that is compatible with the ink base, absence tangible evidence to the contrary.

Applicant also argues that in Reitnauer the highest dpi achievable is 96 dpi. However it is the position of the Examiner that the word "about" permits some tolerance. At least about 10% was held to be anticipated by a teaching of a content not to exceed about 8%. *In re Ayers*, 154 F 2d 182, 69 USPQ 109 (CCPA 1946). Therefore the Examiner is maintaining the rejection absence tangible evidence to the contrary.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Veronica F. Faison whose telephone number is 571-272-1366. The examiner can normally be reached on Monday-Thursday and alternate Fridays 8 am to 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DAVID SAMPLE
PRIMARY EXAMINER

VFF